Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-1958

INDIANA REFRIGERATOR LINES, INC.,
Petitioner,

vs.

WISCONSIN PACKING CO., INC.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION

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TABLE OF CONTENTS

	Page
Statement of the Case	1
Reasons for Denying the Writ	2-5
I. The Decision Below Is Consistent with Supreme Court Precedent	2-4
II. The Decision Below Is Not In Conflict with the Written Notice View Held by the Other Circuits	5
Conclusion	6

INDEX TO DECISIONS

United States Decisions.

Gooch v. Oregon Short Line Railroad Co., 285 U.S. 22, 24 (1922)	4
Georgia, Florida & Alabama Ry. Co. v. Blish Milling Co. U.S. 190 (1916)	3
St. Louis, Iron Mountain & Southern Ry. Co. v. Starbird, 243 U.S. 592, 606 (1917)	3

Court of Appeals Decisions.

Atlantic Coast Line R. Co. v. Pioneer Products, Inc., 256 F.2d 431 (5th Cir. 1958)	3
Atchison, Topeka & Santa Fe Ry. Co. v. Littleton Leasing Co., 582 F.2d 1237, 1240 (10th Cir. 1978)	5
Hopper Paper Co. v. Baltimore & O. R. Co., 178 F.2d 179 (7th Cir. 1949)	2, 4

Page

Loveless v. Universal Carloading & Distributing Co., 255 F.2d 637 (10th Cir. 1955) 5

Perini-North River Associates v. Chesapeake & Ohio Ry. Co., 562 F.2d 269 (3rd Cir. 1977) 5

Miscellaneous.

The Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 11707(e) 2

Supreme Court Rule 17.1 2

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BRIEF OF RESPONDENT IN RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

STATEMENT OF THE CASE

The Statement of the Case of the Petitioner is consistent with the facts as presented by it on motion for summary judgment and as accepted by the dissenting opinion below.

The Respondent contends that the more accurate statements of fact are expressed in the majority decision at App. at A-2 through A-4. Facts must be viewed in favor of the party opposing summary judgment, the Respondent herein. 6 MOORE'S FEDERAL PRACTICE ¶56.15[3] (2nd ed. 1976) and the cases cited therein.

REASONS FOR DENYING THE WRIT

This Court will review a decision of a federal court of appeals only where there exists special and important reasons therefor. Sup. Ct. R. 17.1. Such special and important reasons include conflicts between the circuits, the exercise of the Court's supervisory powers or a case of first impression. The Petitioner and the Respondent agree that the instant case is not one of first impression. The Respondent contends that this is likewise not a case involving a conflict between the circuits or a decision requiring the Court to exercise its supervisory powers. Rather, the Petitioner herein is attempting to convince this Court to review *Hopper Paper Co. v. Baltimore & O. R. Co.*, 178 F. 2d 179 (7th Cir. 1949), a case which is not material to the decision of the court below.

THE DECISION BELOW IS CONSISTENT WITH SUPREME COURT PRECEDENT.

The court of appeals found that the written notice of claim of the Respondent was sufficient to secure to the Petitioner reasonable notice so as to facilitate a prompt investigation by it. The court of appeals concluded that the Respondent's written notice sufficiently appraised the Petitioner of the character of the claim. The court of appeals did not conclude, as contended by the Petitioner, that actual knowledge standing alone would suffice under the Carmack Amendment. 49 U.S.C. § 11707(e).

The court below correctly applied the prior pronouncements of the Court in reversing the district court's granting of summary judgment for the Petitioner and

remanding the same for trial on the issues of notice and the merits of the case. The court of appeals rejected the formalistic approach to the written notice of claim requirements as adopted in *Atlantic Coast Line R. Co. v. Pioneer Products, Inc.*, 256 F.2d 431 (5th Cir. 1958), and applied the principles adopted by this Court in *Georgia, Florida & Alabama Ry. Co. v. Blish Milling Co.*, 241 U.S. 190 (1916) and *St. Louis, Iron Mountain & Southern Ry. Co. v. Starbird*, 243 U.S. 593 (1917).

> "The Supreme Court has indicated that a bill of lading requirement that claims be made in "writing" within a specified period of time will be enforced (*St. Louis, Iron Mountain & Southern Ry. Co. v. Starbird*, 243 U.S. 593, 604-605), but the Court has also expressed a willingness to construe such writings liberally. Thus, in *Georgia, Florida & Alabama Ry. Co. v. Blish Milling Co.*, 241 U.S. 190, the Court stated that a bill of lading requiring written claims for losses within four months after delivery of the property was intended simply 'to secure reasonable notice' and 'to facilitate prompt investigation.' Accordingly, it held that a written notice that 'sufficiently apprised the carrier of the character of the claim * * *' was adequate. The court noted that compliance with the written notice provision of a bill of lading 'does not require documents in a particular form,' and that 'it is addressed to a practical exigency and it is to be construed in a practical way.' 241 U.S. at 198. Therefore it permitted the shipper in that case to recover even though its communications with the carrier consisted of a series of telegrams about the damage of the cargo, one of which stated a mere intention to file a claim at some later date." App. at A-5.

In applying the principle that emerged from *Blish*, the court of appeals concluded that the Respondent's written notice was sufficient, when construed in a

practical way, to advise the Petitioner of the Respondent's claim and to permit it to promptly investigate the matter so as to protect its interest.

> "Accordingly, the August 2 letter was 'an adequate statement . . . deemed to satisfy this [written claim] requirement' of the bill of lading. 241 U.S. at 198." App. at A-6.

The Petitioner, in parroting the dissenting opinion, mistakenly contends that the majority reconsidered and adopted the specific holding in *Hopper*. Even a cursory review of the majority decision below indicates that this contention is without merit. The written notice provided to the Petitioner was sufficient, under the Respondent's version of the facts, to satisfy the written notice requirements of the bill of lading.

> "We are not postulating a general rule that some actual knowledge must exist for an informal notice to be effective any more than we wish to decide whether some writing is always required. We find only that the combination of actual and written notice in this case is sufficient. Accordingly we need not reconsider the specific holding of *Hopper Paper Co. v. Baltimore & O. R. Co.*, 178 F.2d 179 (7th Cir. 1949), certiorari denied, 339 U.S. 943. Since there was more than mere actual notice in this case, to overrule *Hopper* would be inappropriate, particularly insofar as that case helps illuminate the role actual notice can play in an evaluation of the overall situation." App. at A-12.

Thus to contend, as the Petitioner does, that the court of appeals contradicted the prior decisions of this Court that "actual knowledge on the part of employees of [a carrier is] . . . not an excuse for omitting the notice in writing," *Gooch v. Oregon Short Line Railroad Co.*, 258 U.S. 22, 24 (1924), is both misleading and totally without merit.

THE WRITTEN NOTICE VIEW OF THE DECISION BELOW IS NOT IN CONFLICT WITH THE OTHER CIRCUITS

The Petitioner contends, indirectly, that the decision below is in conflict with recent decisions of the Third Circuit and Tenth Circuit. This contention is likewise without merit. Neither the decision below nor the decisions in *Perini-North River Associates v. Chesapeake & Ohio Ry. Co.*, 562 F.2d 262 (3rd Cir. 1977) and *Atchinson, Topeka & Santa Fe Ry. Co. v. Littleton Leasing Co.*, 582 F.2d 1237 (10th Cir. 1978), absolved the shipper [Respondent] from the requirement that a written notice be provided the shipper [Petitioner].

Unlike *Perini*, the Respondent herein provided written notice to the Petitioner [shipper]. While the majority concluded that the Petitioner's actions were sufficient to invoke the doctrine of estoppel as was done in *Perini*, such a finding was unnecessary because of the written notice actually provided. Thus, the decision below is not in conflict with *Perini*.

Likewise, the decision below is not in conflict with *Littelton* and a prior decision of the Tenth Circuit, *Loveless v. Universal Carloading & Distributing Co.*, 255 F.2d 637 (10th Cir. 1955). Both *Littelton* and *Loveless* stand for the principle that a "claim in writing" must be construed consistent with the practical exigencies of the situation which would include the actual knowledge of the shipper. These decisions are consistent with the decision of the court below.

CONCLUSION

For the reasons above stated, the Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit should be denied.

Respectfully submitted,

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